



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. A. Hodges
County Auditor
Williamson County
Georgetown, Texas

Dear Sir:

Opinion No. 043172

Re: Does the Commissioners' Court have the legal authority to place the trust funds in possession of the District Clerk and the trust funds in possession of the County Clerk in different depositories?

Your recent request for an opinion of this department upon the above stated question has been received.

We quote from your letter as follows:

"Kindly refer to the above article dealing with a Depository for the Trust Funds of the County and District Clerks and give me an opinion relative to the following-,

"Does the law hold the Trust Funds of the County and District Clerks a joint fund and to be placed in one Depository selected by the Commissioners' Court, or does the Commissioners Court have the option of dividing the funds and placing in more than one Depository, that is the County Clerks' funds in one and the District Clerks' in another Depository'?"

"The Commissioners Court has failed for the past few years to receive any bids from the Banks or Firms to act as a County Depository, yet the advertisement for bids is placed as the law directs, therefore it is divided among thirteen Banks within the County on the basis of capital

stock and surplus, but the Trust Funds of the County and District Clerk have been considered as a joint fund and one Bank selected as a Depository for same. When the County Depositories were selected on Feb. 10th. 1941 there was some contention from the Bankers as to the division of the Trust Funds on the same basis as the regular County Funds, so the selecting of a depository was postponed for these special funds until an opinion was received from your department.

"I have always been of the opinion, as has the Commissioners' Court, that this special fund was a joint fund and the Court did not have any authority for dividing it in any manner, but must place it altogether in one Depository. I shall greatly appreciate having your opinion relative to this at your very earliest convenience."

Article 2558a, Vernon's Annotated Civil Statutes, referred to in your letter, reads in part as follows:

"Section 1. The Commissioners Court of each county is authorized and required at the February term thereof next following each general election to receive applications from any banking corporation, association or individual banker in such county as may desire to be selected as a depository for Trust Funds in possession of the County and District Clerks. Said applications shall be filed with the County Clerk on/or before ten o'clock a.m. on the first day of the term of Court at which said applications are to be received. Said application shall be accompanied by a certified check for not less than one-half of one per cent of the average daily balances of the amount of Trust Funds in the possession of the Clerks during the preceding calendar year which amount shall be determined by the County Clerk on/or before ten (10) days before the applications herein provided for are required to be filed, and a certified check accompanying

the application as herein provided for in the amount so determined by the County Clerk shall be sufficient compliance with this provision, which certified check shall be a guarantee of the good faith on the part of the applicant, and that if his application is accepted the bond hereinafter provided for will be entered into. Upon the failure of the banking corporation, association or individual banker that may be selected as such depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages, and the county shall select another depository as hereinafter provided. In the event any application shall not be accepted, the certified check accompanying the same shall be returned. The check of the applicant whose application is accepted shall be returned when his bond is filed and approved by the Commissioners Court and not until such bond is filed and approved. It shall not be necessary for the county to advertise or give notice that applications will be received as provided by this Statute.

"Sec. 2. It shall be the duty of the Commissioners Court at ten o'clock a.m. on the first day of each term at which applications are required to be received to enter said applications on the minutes of the Court and to select a depository for the Trust Funds in the possession of County and District Clerks.

"Sec. 3. Within thirty (30) days after the selection of such depository, it shall be the duty of the banking corporation, association, or individual banker so selected to qualify in the same manner as now provided by law for the qualification of county depositories.

"Sec. 4. As soon as said depository has qualified as provided by law and has been approved by the Commissioners Court, said Court shall make and enter an order upon the minutes,

designating such banking corporation, association, or individual banker as County Depository for Trust Funds until the designation and qualification of a successor, and thereupon it shall be the duty of the County and District Clerks of such county to deposit all Trust Funds in their possession with said depository in the manner hereinafter provided; provided in the event, a new depository has not been selected and qualified by April 15th succeeding the term of Court at which a depository is required to be selected as required by this Act, then the term of such depository shall end and all Trust Funds due or on deposit shall be paid to the Clerk in whose name the account is carried.

"Sec. 5. If for any reason there shall be submitted no application by any banking corporation, association or individual banker in the county, or in case there shall be no application for the entire amount of Trust Funds, or in the event all applications submitted have been rejected by the Commissioners Court, or in the event a depository selected has failed to qualify, or in the event that the depository shall become insolvent, or in the event a new depository has been selected on account of the failure of the regular depository to execute a new bond as hereinafter provided, then in either event, the Commissioners Court shall advertise for applications from any banking corporation, association, or individual banker within the State of Texas, and may select a depository, which depository shall qualify in the manner above provided. Notice of the selection of a depository as provided by this Act shall be published once each week for two (2) successive weeks in a newspaper of general circulation within the county, if there be such newspaper. If there is no newspaper published in the county, then the same shall be posted at the courthouse for said period. In the discretion of the Commissioners Court said notice may also be published in any newspaper outside

of the county for the same length of time.

"Sec. 6. It shall be the duty of the depository to provide for the payment at the county seat of the county upon presentment all checks drawn by the County or District Clerk upon the funds deposited in the name of such Clerk as long as such funds shall be in the possession of the depository subject to such checks. For every failure to pay such check at such county seat upon presentment, said depository shall forfeit and pay to the holder of such checks ten per cent (10%) of the amount thereof.

"Sec. 7. If any depository selected by the Commissioners Court be not located at the seat of such county, said depository shall file with the County Clerk of such county, a statement designating the place at said county seat where, and the person, firm or corporation by whom, all the deposits may be received from the Clerks for such depository, and where and by whom in said county seat all checks drawn on such depository will be paid and such depository shall cause every check to be paid upon presentation at the place so designated so long as the said depository has sufficient funds to the credit of such funds applicable to their payment.

" . . . "

After carefully considering the provisions of Article 2558a, quoted above, we are of the opinion that the Commissioners' Court is authorized and required to select only one depository for trust funds in possession of the County and District Clerks. Therefore, the question as above stated is respectfully answered in the negative.

Trusting that the foregoing fully answers your inquiry, we are

APPROVED MAR 10, 1941

Gerard B. Mann
ATTORNEY GENERAL OF TEXAS

Yours very truly

ATTORNEY GENERAL OF TEXAS

Ardell Williams
By
Ardell Williams
Assistant
APPROVED
OPINION
COMMITTEE
BY *BWA*
CHAIRMAN

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